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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,330	07/10/2006	Jacobus Johannes Van Dijk	72998-013900/US	7515
33717 7590 12/29/2009 GREENBERG TRAURIG LLP (LA) 2450 COLORADO AVENUE, SUITE 400E INTELLECTUAL PROPERTY DEPARTMENT SANTA MONICA, CA 90404			EXAMINER	
			RUBY, TRAVIS C	
			ART UNIT	PAPER NUMBER
			3744	
NOTIFICATION DATE		DELIVERY MODE		
12/29/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

laipmail@gtlaw.com  
allenr@gtlaw.com  
santosv@gtlaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/564,330	<b>Applicant(s)</b> VAN DIJK, JACOBUS JOHANNES
	<b>Examiner</b> TRAVIS RUBY	<b>Art Unit</b> 3744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 October 2009.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.  
 4a) Of the above claim(s) 2-6, 18, 19 and 21 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,7-17 and 20 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 10 January 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statements (PTO/SB/08)  
 Paper No(s)/Mail Date 1/10/2006
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date: \_\_\_\_\_  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 2-6, 18-19, and 21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/13/2009.

### ***Specification***

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The abstract of the disclosure is objected to because the title is recited in the abstract and the abstract uses legal phraseology, such as "means". Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 9 recites the broad recitation "plastic", and the claim also recites "more particularly polyamide" which is the narrower statement of the range/limitation.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 8, 9, 11-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitcomb (US4173212).

**Re Claim 1.** Whitcomb teaches a partition for separating two areas (Figure 1), comprising two translucent separation walls (ref 18, 22) (Column 2 lines 23-33), wherein means are provided for moving a liquid (ref 48) between said separation walls, said means comprising liquid dispensing nozzles (ref 54) arranged to provide a liquid film (Column 1 line 65 to Column 2 line 6; Column 3 lines 14-26; Column 3 line 64 to Column 4 line 11),

wherein one of said separation walls is an external separation wall (ref 22) and the other of said separation walls is an internal separation wall (ref 18), wherein said liquid film moves over said internal separation wall (Column 3 lines 14-26; Column 3 line 64 to Column 4 line 11), a thermal insulating space being present between said liquid film and the external separation wall (Column 2 lines 42-51, Column 4 lines 45-61).

Whitcomb teaches that the two panels are spaced apart and that spacers can be utilized to accomplish this (Column 2 lines 42-51) but fails to specifically teach that the two panels are at least five millimeters apart. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to space the two panels about five millimeters apart, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d272, 205 USPQ 215 (CCPA 1980).

**Re Claim 8.** The partition according to Claim 1,

wherein the partition separates the interior of a building construction from surroundings of the building construction (Figure 1), wherein said internal separation wall provided with liquid is adjacent to the interior of said building construction (Column 3 lines 14-26; Column 3 line 64 to Column 4 line 11).

**Re Claim 9.** The partition according to Claim 1, wherein the internal separation wall or the external separation wall comprises plastic (Column 4 lines 45-47).

**Re Claim 11.** The partition according to Claim 1, having a frame (ref 24) that is arranged around said internal separation wall and contains a liquid feed (ref 46) and a liquid discharge (ref 54) (Column 2 lines 35-51, Column 3 lines 1-26; Column 3 line 64 to Column 4 line 11).

**Re Claim 12.** The partition according to Claim 11, wherein said internal separation wall can be moved into a space by said frame (Figure 1 and 2, Column 2 lines 35-51).

**Re Claim 13.** A building construction (Figure 1) containing a partition for separating two areas,

comprising two translucent separation walls (ref 18, 22) (Column 2 lines 23-33),  
wherein means are provided for moving a liquid (ref 48) between said separation walls,  
said means comprising liquid dispensing nozzles (ref 54) arranged to provide a liquid film  
(Column 1 line 65 to Column 2 line 6; Column 3 lines 14-26; Column 3 line 64 to Column 4 line 11),

wherein one of said separation walls is an external separation wall (ref 22) and the other of said separation walls is an internal separation wall (ref 18), wherein said liquid film moves over said internal separation wall (Column 3 lines 14-26; Column 3 line 64 to Column 4 line 11), a thermal insulating space being present between said liquid film and the external separation wall (Column 4 lines 45-61).

Whitcomb teaches that the two panels are spaced apart and that spacers can be utilized to accomplish this (Column 2 lines 42-51) but fails to specifically teach that the two panels are at least five millimeters apart. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to space the two panels about five millimeters apart, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d272, 205 USPQ 215 (CCPA 1980).

**Re Claim 14.** The building construction according to Claim 13, further comprising a heat sink (ref 38) for releasing said liquid to the liquid dispensing nozzle, wherein the heat sink takes up the liquid originating from said internal separation wall (Column 2 line 62 to Column 3 line 26; Column 3 line 64 to Column 4 line 30).

**Re Claim 15.** A method for controlling the temperature in an area, comprising:  
separating the area from surroundings of the area with a translucent partition comprising two separation walls (ref 18, 22)(Column 2 lines 23-33),  
wherein one separation wall (ref 18) constitutes the boundary with said area and the other separation wall (ref 22) constitutes the boundary with said surroundings; applying a liquid film to

one separation wall, such that the top of the liquid film is some distance away from said other separation wall (Column 3 lines 14-26; Column 3 line 64 to Column 4 line 11), and;

arranging an insulating gas in said space between said liquid film and said other separation wall (Column 4 lines 45-61), wherein the heat transport to or from said area is determined by controlling the amount of liquid supplied or discharged (Column 3 lines 14-26; Column 3 line 64 to Column 4 line 11).

Whitcomb teaches that the two panels are spaced apart and that spacers can be utilized to accomplish this (Column 2 lines 42-51) but fails to specifically teach that the two panels are at least five millimeters apart. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to space the two panels about five millimeters apart, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d272, 205 USPQ 215 (CCPA 1980).

**Re Claim 16.** Whitcomb teaches a light penetrable member (Column 2 lines 23-30, Column 4 lines 40-50) but fails to specifically teach that said film is at least about ninety five percent translucent. Whitcomb teaches that the “light penetratable member” is “light transparent ... which permits sufficient light transfer”. The definition of transparent is being capable of transmitting light so that objects or images can be seen as if there were no intervening material, aka clear. Thus one of ordinary skill in the art would recognize that to be clear, that the object would have to be at least 95% translucent. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the panels 95% translucent,

since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d272, 205 USPQ 215 (CCPA 1980).

**Re Claim 17.** The method according to Claim 15, wherein said liquid comprises water or glycol (Column 1 line 62 to Column 2 line 5; Column 2 line 62 to Column 3 line 26; Column 3 line 64 to Column 4 line 30).

9. Claims 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitcomb (US4173212) in view of Lipinski (US4067347).

**Re Claim 7.** Whitcomb teaches that one separation wall is permanent and that an additional wall can be added for increased heat transfer efficiency but Whitcomb fails to specifically teach said external separation wall is installed permanently and said internal separation wall is removable. Lipinski teaches said external separation wall (ref 86) is installed permanently (Column 5 lines 63-68; Column 6 lines 10-15) and said internal separation wall (ref 50) is removable (Column 4 lines 44-66). In view of Lipinski's teachings, it would have been obvious to one of ordinary skill in the art to make the external wall permanent since that provides the predictable and expected result of structural rigidity; while making the internal separation wall removable allows for the predictable and expected result of selective heat transfer when additional conditioning of the space is necessary.

**Re Claim 10.** Whitcomb fails to specifically teach that the external separation wall is provided with a surface that can be removed therefrom in order to form an opening in said external separation wall. Lipinski teaches the external separation wall is provided with a surface that can be removed therefrom in order to form an opening (ref 26) in said external separation wall (Column 3 lines 49-52, Column 5 lines 63-68). In view of Lipinski's teachings, it would have been obvious to one of ordinary skill in the art to make an opening in the external wall since this allows for the predictable result of venting the interior of the structure and in addition allows for an entrance to be formed to the inside of the structure.

10. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Whitcomb (US4173212) in view of Diggs (US4000850).

**Re Claim 20.** Whitcomb fails to specifically disclose that the feed temperature of said liquid is below about fourteen degrees Celsius. Diggs teaches that the feed temperature of said liquid is below about fourteen degrees Celsius (Column 5 lines 1-5 & 28-40; Column 6 lines 14-26, It is well known in the art that heat pumps can chill water to fourteen degrees Celsius). In view of Diggs's teachings, it would have been obvious to one of ordinary skill in the art at the time of invention to chill the water to fourteen degrees Celsius as this allows the structure to maintain a desired temperature without the structure overheating. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the feed water about fourteen degrees Celsius, since it has been held that discovering an optimum

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value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d272, 205 USPQ 215 (CCPA 1980).

11. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Whitcomb (US4173212) in view of Gleckman et al (US6289772B2).

**Re Claim 20.** Whitcomb fails to specifically disclose that the feed temperature of said liquid is below about fourteen degrees Celsius. Gleckman et al teaches that the feed temperature of said liquid is about fifteen degrees Celsius (Column 4 line 56 to Column 5 line 24). In view of Gleckman et al's teachings, it would have been obvious to one of ordinary skill in the art at the time of invention to chill the water to fourteen degrees Celsius as this allows the structure to maintain a desired temperature without the structure overheating. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the feed water about fourteen degrees Celsius, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d272, 205 USPQ 215 (CCPA 1980).

### ***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to TRAVIS RUBY whose telephone number is (571)270-5760. The examiner can normally be reached on Monday-Friday 9:30-6:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frantz Jules or Cheryl Tyler can be reached on 571-272-6681 or 571-272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Travis Ruby/  
Examiner, Art Unit 3744

/Frantz F. Jules/  
Supervisory Patent Examiner, Art Unit 3744